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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,942	04/12/2001	Lawrence J. Mann	56319USA3A	3232
32692	7590	08/04/2004	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			SALVATORE, LYNDIA	
			ART UNIT	PAPER NUMBER

1771

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/833,942

Applicant(s)

MANN ET AL.

Examiner

Lynda M Salvatore

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 07/20/04. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 23-26,28-33,35-37,48.


Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues a lack of motivation to combine the references of Yamato and Lise on the grounds that the teaching of Yamato is from a different field of endeavor from the instant invention and the invention of Lise. Specifically, the patent issued to Yamato is directed to a sponge used for the facial area whereas the claimed invention and the patent issued to Lise are directed to a cleaning article. These arguments are not found persuasive on the grounds that the Examiner maintains that the patent issued to Yamato teaches all of the chemical and structural features of the instantly claimed invention except for the specific binder material. Yamato does teach employing a binder adhesive to fix the rubber particles to the foam substrate, but does not teach a specific adhesive binder.

In response to Applicant's argument that the references relied upon are nonanalogous art, it has been held that the determination that a reference is from a nonanalogous art is twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In re Wood, 202 USPQ 171,174. In this case, it appears that Applicant is employing the claimed binder to solve the problem of fixing particles to a foam substrate. As such, though Yamato is from a different field of endeavor of the instantly claimed invention and Lise, said reference was relied upon as a teaching to using a binder to fix particles to a foam substrate. Thus, the Examiner maintains that is proper to look to the prior art to identify binders which are suitable for adhering particles to foam substrates. Lise specifically teaches using a flexible coating comprising the claimed nitrile rubber to fix abrasive particles to a foam substrate.

The Examiner maintains that one of ordinary skill in the art would be motivated to employ a flexible binder coating such as the one taught by Lise as the binder adhesive in the invention of Yamato. With regard to the desired intended use of a cleaning article, the Examiner maintains that the since combination of prior art meets all of the claimed structural and chemical features set forth and there is nothing on record to evidence that the invention produced by the combination of prior art could not function in claimed manner of use.



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